



November 12, 2002

Ms. Catherine C. Kemp  
Records Supervisor  
Rowlett Police Department  
P.O. Box 370  
Rowlett, Texas 75030

OR2002-6400

Dear Ms. Kemp:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172031.

The Rowlett Police Department (the "department") received a request for all records regarding the death of a specific individual. You claim that the requested information is excepted from disclosure under section 58.007 of the Family Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

In this instance, the requested report relates to an incident that involved a juvenile. However, the department does not argue, nor does the report itself reflect, that the juvenile involved in the incident has been accused of any delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code § 51.03 (defining delinquent conduct and conduct indicating a need for supervision). Therefore, the report is not confidential under section 58.007(c) of the Family Code. *See also* Fam. Code § 51.04(a) (title 3 of Family Code covers proceedings in all cases involving delinquent conduct or conduct indicating need for supervision engaged in by child). Thus, the submitted information is not excepted from disclosure under section 552.101.

We note that the submitted information contains a driver's license number that would ordinarily be excepted from release pursuant to section 552.130. Section 552.130 excepts from release information relating to a Texas driver's license, including Texas driver's license numbers. However, information protected under section 552.130 is intended to protect a person's privacy. Therefore, under section 552.023 of the Government Code, a person who is the subject of the information or the person's authorized representative has a special right of access to such information. Accordingly, the requestor here has a special right of access to her driver's license number. Thus, the department must release the requestor's driver's license number pursuant to section 552.023.

Likewise, we note that the submitted information contains a social security number that ordinarily might be excepted from release pursuant to section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I) (making confidential social security numbers if obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990). Here, however, the social security number belongs to the requestor, and so must be released to the requestor pursuant to her special right of access to this information. *See* Gov't Code § 552.023.

Finally, we note that submitted information includes an EMS record subject to section 773.091 of the Health and Safety Code. Section 773.091 provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical

supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

This confidentiality "does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services." *Id.* § 773.091(g). It does not appear that any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code apply in this instance. Accordingly, the department must withhold the submitted EMS record under section 552.101 of the Government Code, except for information required to be released under section 773.091(g).

To summarize, you must release the requestor's driver's license number and social security number pursuant to section 552.023. You must withhold the submitted EMS record under section 552.101 of the Government Code, except for information required to be released under section 773.091(g). As you raise no further exceptions to release, you must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

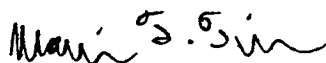
at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Maverick F. Fisher  
Assistant Attorney General  
Open Records Division

MFF/seg

Ref: ID# 172031

Enc: Submitted documents

c: Ms. Betty Friedell  
710 North Yale  
Garland, Texas 75042  
(w/o enclosures)